

EXHIBIT 1

From: [Michael Calb](#)
To: [Ace Factor](#); [Shanna Molinare](#)
Cc: [John Strawn](#); [Benjamin Dower](#); [Deborah Woltersdorf](#); [Chanler Langham](#); [Melanie Galanti](#)
Subject: RE: TDCJ email search
Date: Tuesday, May 16, 2023 9:24:18 AM

EXTERNAL Email

Good morning Ace,

My apologies for the delay in getting back to you.

Our responses to each issue are in red, below.

If you have any follow up questions, I'm around for a call today and tomorrow.

Michael

From: Ace Factor <AFactor@susmangodfrey.com>
Sent: Thursday, May 11, 2023 5:30 PM
To: Michael Calb <Michael.Calb@oag.texas.gov>; Shanna Molinare <Shanna.Molinare@oag.texas.gov>
Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>; Chanler Langham <clangham@SusmanGodfrey.com>; Melanie Galanti <MGalanti@susmangodfrey.com>
Subject: RE: TDCJ email search

Hi all,

Writing to address a few outstanding issues in the Haverkamp matter. Michael/Shanna and Ben, can you please let me know if you have some time tomorrow to discuss the issues below?

1. **Depositions.**

- a. Can we please postpone Dr. Penn's deposition, which is currently scheduled for Tuesday, May 16? I had a personal conflict come up on Tuesday. Also, based on some of the document issues identified below, I believe I am still missing many responsive materials that may be relevant to Dr. Penn's deposition. I also expect to serve supplemental 30(b)(6) topics this week that may be relevant to Dr. Penn. **We do not oppose postponing Dr. Penn's deposition. Feel free to propose new dates. Hopefully the "missing documents" issue will be resolved once we update our production and serve a privilege log,**

which we are working on now.

- b. In light of some of the documents produced this week, I would also like to take Dr. Linthicum's deposition. Let's touch base regarding scheduling that. We do not believe Dr. Linthicum's testimony will be necessary given how much of it will overlap with others you are deposing. Will you agree to postpone your decision on deposing Dr. Linthicum until after the discovery issues are resolved the 30(b)(6) depositions are complete?
- c. I believe we still need to schedule Mr. Guerrero's deposition. Correct. Feel free to propose dates. For efficiency's sake, it might make sense to proceed with Mr. Guerrero's deposition before Dr. Penn's, since there are no outstanding discovery issues holding up the former.
- d. I am hopeful that we can work out a schedule extension that will give us some leeway to resolve these discovery issues and get these depositions completed. We are amenable to extending the discovery schedule.

2. Document Issues.

- a. On Monday, May 9, I received the production of Dr. Linthicum's emails that apparently were searched for and collected back in December 2022 when Dr. Linthicum served her responses to Plaintiff's first RFPs. I have not had time to fully review these materials since Monday, but I have noticed the following inconsistencies and problems:
 - i. Bates numbers TDCJ0000263–TDCJ0000285, TCJ0000316-TDCJ0000527, and TDCJ0000776-TDCJ0000795 are missing. Please promptly produce those materials. These documents were produced in PDF format.
 - ii. The documents produced go through only December 2021. Please supplement the production through present. December 2021 is when the documents were pulled for the initial production. We will pull documents through the

present and supplement the production promptly.

iii. Please produce the native Excel copies of TDCJ0000262, TDCJ0000316, and TDCJ0000775, in the same format as you have produced all other Excel spreadsheets within the production. The spreadsheets produced as PDFs contain privileged and/or confidential information. Since there is no way to redact native Excel files, we will not provide native versions. The redactions will be noted on our privilege log.

iv. Several emails do not include responsive emails within chains. Examples of missing email chains: TDCJ0000142 (missing 11/25/2015 email and attachment, as well as all other emails in chain); TDCJ0000255 (missing 11/22/2016 email in chain and attachment); TDCJ0000288; TDCJ0000608 (missing 1/21/2016 email in chain and attachment); TDCJ0000612 (Missing 2/16/2016 and attachment in chain); TDCJ0000623 (missing all emails and attachments in chain); TDCJ0000848 (missing 12/17/2021 email and attachment in chain). Can you please confirm that you produced all the documents responsive to the search terms identified in Dr. Linthicum's responses? Privileged emails were removed from the production, even if they were responsive to the search terms. Our forthcoming privilege log should account for the production gaps you've encountered. However, just to be sure, I will rerun the terms, cross-check with our production, and make sure nothing non-privileged has been inadvertently withheld.

b. ***Dr. Murray's/UTMB's document production.*** I found several emails in the May 9 TDCJ document production that were sent by or to Dr. Murray that were NOT included in UTMB's December 2022 productions of Dr. Murray's emails. These emails, which Dr. Murray did not produce before his deposition, are obviously relevant to the topics on which Dr. Murray was deposed and conflict with some of his deposition testimony. E.g., TDCJ0000236, TDCJ0000247, TDCJ0000288; TDCJ0000297; TDCJ0000311; TDCJ0000539; TDCJ0000618; TDCJ0000641; TDCJ0000666; TDCJ0000674; TDCJ0000696; TDCJ0000697; TDCJ0000701 TDCJ0000715;

TDCJ0000837.

In Dr. Murray's responses to RFPs 8, 9, and 10, and 13 Dr. Murray stated:

"Defendant searched his email account for emails containing the following terms: "G-51.11," "Gender Dysphoria," "Transgender," "GD," and "Gender Identity. As a result of this search, Defendant produces Bates Nos. 12698-13004 " Defendant searched his email account for emails containing the following terms: "Haverkamp," "00702013," and "702013." As a result of this search, Defendant produces Bates Nos. 12687-12694."

Dr. Murray apparently did not search for or produce emails responsive to that search. Instead of reopening Dr. Murray's deposition, I'd respectfully request that Defendants re-run a search through Dr. Murray's email and produce all responsive documents that hit on the terms above. **We will promptly re-run a search a search of Dr. Murray's emails and produce all responsive, non-privileged files that hit on the terms above.**

c. In the attached April 21 email, I requested the following supplemental materials. These materials have not yet been produced:

i. Please produce all notes, meeting minutes, and communications between or among the CMHCC's "Gender Dysphoria working group." These materials are responsive to at least RFP Nos. 6, 8, 9, 15, and 18. Dr. Murray referenced these during his deposition. **These documents are being withheld because they are protected by the deliberative process privilege and will be included in our privilege log.**

ii. Please produce all notes, meeting minutes, and communications between or among the CMHCC's "Policy and Procedure Committee" relating to inmates with gender dysphoria or to Policy G-51.11. These materials are responsive to at least RFP Nos. 6, 8, 9, 15, and 18. **We are still working with TDCJ to retrieve these records and will**

produce them (if not privileged) once obtained.

3. **Parties.**

- a. It appears at least Julia Hinter, Kris Coons, and Brian Edwards are new members of the CMHCC that have not been added as defendants. In previous committee-changes, Defendants have filed a notice of substitution of Defendants. Please let me know if you intend to file one of these, or if I should instead file an amended complaint. **Yes, we will file a notice of substitution this week.**
- b. I also notice that Dr. Penn used to be a party to this case but is no longer listed as a party. Based on Dr. Murray's recent testimony that Dr. Penn has primary responsibility for managing the Gender Dysphoria clinic and would be responsible for reviewing any treatment recommendation, are Defendants opposed to my re-addition of Dr. Penn as a defendant? **We oppose re-adding Dr. Penn as a defendant. We also believe it is unnecessary from Plaintiff's perspective. Dr. Murray is Dr. Penn's superior and, along with the other named Defendants, has the authority to provide all of the relief sought through this lawsuit. In other words, if an injunction were to be issued against Dr. Murray in his official capacity, he and the other named Defendants would have the power to ensure that the terms of the injunction were satisfied, including by delegating tasks to Dr. Penn, if necessary.**

4. **Deadlines.** Tomorrow, I will send a proposed updated scheduling order that extends the deadlines. **As noted above, we agree to another extension. Because this would be our fourth extension request, I think we shouldn't ask to push the current deadlines more than 30 days.**

Ace Factor | Susman Godfrey LLP

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afactor@susmangodfrey.com

From: Michael Calb <Michael.Calb@oag.texas.gov>

Sent: Thursday, May 11, 2023 10:18 AM

To: Ace Factor <AFactor@susmangodfrey.com>; Shanna Molinare
<Shanna.Molinare@oag.texas.gov>

Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>
Subject: RE: TDCJ email search

EXTERNAL Email

Good morning Ace,

I filed a motion substitute in as lead counsel, but I forgot the certificate of conference and need to now file that separately. Are you unopposed to the motion?

Thanks,

Michael

From: Ace Factor <AFactor@susmangodfrey.com>
Sent: Wednesday, May 3, 2023 3:32 PM
To: Shanna Molinare <Shanna.Molinare@oag.texas.gov>
Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>; Michael Calb <Michael.Calb@oag.texas.gov>
Subject: RE: TDCJ email search

Thanks Shanna. Let's confirm Tuesday, May 16 for Dr. Penn's deposition. I'll follow up on the other points separately.

Ace Factor | Susman Godfrey LLP

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From: Shanna Molinare <Shanna.Molinare@oag.texas.gov>
Sent: Wednesday, May 3, 2023 3:30 PM
To: Ace Factor <AFactor@susmangodfrey.com>
Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>; Michael Calb <Michael.Calb@oag.texas.gov>
Subject: RE: TDCJ email search

EXTERNAL Email

Ace,

I just want to let you know that Dr. Penn is available on May 16, if that date works for you.

Shanna E. Molinare

Division Chief, Law Enforcement Defense Division

Office of the Attorney General of Texas

Telephone: (512) 936.1299

Email: shanna.molinare@oag.texas.gov

From: Shanna Molinare <Shanna.Molinare@oag.texas.gov>

Sent: Wednesday, May 3, 2023 9:17 AM

To: Ace Factor <AFactor@susmangodfrey.com>

Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>; Michael Calb <Michael.Calb@oag.texas.gov>

Subject: RE: TDCJ email search

Good morning. Ace.

I meant to reach out yesterday afternoon, and I got distracted with another matter.

I asked Dr. Penn for availability next week. He is available on Friday, May 12; but I have a commitment that requires me to be in Austin May 11-12. I want to see if you might be willing to push it Tuesday, May 16 (if he is available and all counsel).

I have verified the current CMHCC members. The current members are:

1. Chairman Dr. Robert Greenberg
2. Lannette Linthicum, M.D., CCHP-A, FACP
3. Cynthia Jumper, M.D.
4. Brian Edwards, M.D.
5. Julia Hilner, M.D.
6. Kris Coons
7. John Burruss
8. Phillip Keiser, M.D.
9. Michelle Erwin

I am finishing the review of Dr. Linthicum's responsive emails. I hope to have those Bates-Stamped and ready for production this afternoon.

I will send the list of cases in which Dr. Murray has served as an expert witness by separate email.

Michael Calb will be assuming the lead counsel role for all Defendants, except Dr. Keiser. He will not formally appear in the case until some time next week because he is out of the office.

I know we discussed extending expert deadlines. And I agree that we should so

that you can receive supplemental disclosures prior to the remaining depositions and expert designations.

Let me know your thoughts.

Shanna E. Molinare

Division Chief, Law Enforcement Defense Division
Office of the Attorney General of Texas
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Email: shanna.molinare@oag.texas.gov

From: Ace Factor <AFactor@susmangodfrey.com>
Sent: Wednesday, May 3, 2023 8:15 AM
To: Shanna Molinare <Shanna.Molinare@oag.texas.gov>
Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>
Subject: Re: TDCJ email search

Following up on this again.

From: Shanna Molinare <Shanna.Molinare@oag.texas.gov>
Sent: Friday, April 28, 2023 10:10:53 AM
To: Ace Factor <AFactor@susmangodfrey.com>
Cc: John Strawn <Jstrawn@strawnpickens.com>; Benjamin Dower <Benjamin.Dower@oag.texas.gov>; Deborah Woltersdorf <Deborah.Woltersdorf@oag.texas.gov>
Subject: RE: TDCJ email search

EXTERNAL Email

Good morning, Ace.

Bruce's estimation was a bit optimistic. We are finalizing the review and I hope we can produce the batch on Monday, May 1.

Shanna E. Molinare

Division Chief, Law Enforcement Defense Division
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Email: shanna.molinare@oag.texas.gov

From: Ace Factor <AFactor@susmangodfrey.com>
Sent: Friday, April 28, 2023 8:20 AM
To: Bruce Garcia <Bruce.Garcia@oag.texas.gov>
Cc: Irma Trejo <Irma.Trejo@oag.texas.gov>; Shanna Molinare <Shanna.Molinare@oag.texas.gov>; John Strawn <Jstrawn@strawnpickens.com>

Subject: Re: TDCJ email search

Just following up on this.

From: Bruce Garcia <Bruce.Garcia@oag.texas.gov>

Sent: Tuesday, April 25, 2023 11:32 AM

To: Ace Factor <AFactor@susmangodfrey.com>

Cc: Irma Trejo <Irma.Trejo@oag.texas.gov>; Shanna Molinare <Shanna.Molinare@oag.texas.gov>; John Strawn <jstrawn@strawnpickens.com>

Subject: TDCJ email search

EXTERNAL Email

Ace,

TDCJ emails were inadvertently lumped in with a different production.

We have located the batch and will be bates numbering and uploading to a drop box with all possible speed. I anticipate it will be done by Thursday at the latest.

My apologies for the delay.

Bruce